

**LODGED**

**SEP 06 1988**

U.S. DISTRICT COURT  
DISTRICT OF ARIZONA

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
PHOENIX DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

GOODYEAR TIRE & RUBBER COMPANY,  
Defendant.

CIVIL ACTION NO.

CONSENT DECREE

88-1443-PHX EHC

*Entered 10/31/88*

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1  
2 WHEREAS, the United States of America ("United States"), on  
3 behalf of the Administrator of the United States Environmental  
4 Protection Agency ("EPA"), has filed a Complaint in this matter  
5 pursuant to the Comprehensive Environmental Response,  
6 Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601  
7 et seq., as amended by the Superfund Amendments and  
8 Reauthorization Action of 1986, Pub. L. No. 99-499, 100 Stat.  
9 1613 (1986) ("SARA"), to compel Defendant, the Goodyear Tire &  
10 Rubber Company ("Goodyear"), to perform remedial action and to  
11 pay all response costs that have been and will be incurred by  
12 the United States in response to releases and threatened  
13 releases of hazardous substances from a facility known as the  
14 Phoenix-Goodyear Airport Site located in Goodyear, Arizona.

15 WHEREAS, the United States alleges that releases of  
16 hazardous substances, including trichloroethylene ("TCE") and  
17 chromium, have occurred at this Site and that Goodyear is a  
18 liable party pursuant to Section 107(a) of CERCLA, 42 U.S.C.  
19 § 9607(a).

20 WHEREAS, in 1983, EPA listed an area including the Site on  
21 the National Priorities List ("NPL") for appropriate response  
22 actions pursuant to CERCLA.

23 WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C.  
24 § 9622, Goodyear and the United States have stipulated and  
25 agreed to the making and entry of this Consent Decree  
26 (hereinafter "Decree" or "Consent Decree") prior to the taking  
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2 of any testimony, based upon the pleadings herein, without any  
3 admission of liability or fault as to any allegation or matter  
4 arising out of the pleadings of any party or otherwise.

5 WHEREAS, Goodyear and the United States agree that  
6 settlement of this matter and entry of this Consent Decree is  
7 made in good faith in an effort to avoid further expensive and  
8 protracted litigation, without any admission as to liability  
9 for any purpose.

10 WHEREAS, each undersigned representative of the parties to  
11 the Consent Decree certifies that he or she is fully authorized  
12 to enter into the terms and conditions of this Decree and to  
13 execute and legally bind such party to this document.

14 NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as  
15 follows:  
16

17 I. JURISDICTION

18 The Court has jurisdiction over the subject matter of this  
19 action and the signatories to this Consent Decree pursuant to  
20 Sections 106, 107, 113 and 122 of CERCLA, 42 U.S.C. §§ 9606,  
21 9607, 9613 and 9622, and 28 U.S.C. §§ 1331 and 1345.  
22

23 II. PARTIES

24 The parties to this Consent Decree are the Goodyear Tire &  
25 Rubber Company, and the United States of America, on behalf of  
26 the Environmental Protection Agency ("EPA").  
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3                   III. BINDING EFFECT

4           A. This Consent Decree shall apply to and be binding upon  
5 the signatories, their successors, and assigns. Goodyear shall  
6 provide a copy of this Consent Decree, as lodged, and shall  
7 provide all relevant additions to the Consent Decree, as  
8 appropriate, to each person, including all contractors and  
9 subcontractors, retained to perform the Remedial  
10 Design/Remedial Action ("the Work") contemplated by this  
11 Decree, and shall condition any contract for the Work on  
12 compliance with this Consent Decree.

13           B. Goodyear shall implement the Work as that term is  
14 defined in this Consent Decree.

15  
16                   IV. DEFINITIONS

17           The following terms used in this Consent Decree are defined  
18 as follows:

19  
20           1. "Operable Unit" ("OU") means the portion of the remedy for  
21 the Site encompassed by the 1987 ROD and further defined by the  
22 Work.

23  
24           2. "1987 Record of Decision" ("1987 ROD") means the Record of  
25 Decision for the Site issued by the Regional Administrator of  
26 Region 9 on September 29, 1987, attached hereto as Appendix A.

1  
2 3. "Site" means Subunit A of Section 16 of the southern  
3 portion of the Phoenix - Goodyear Airport Superfund Site in  
4 Goodyear, Arizona.

5  
6 4. "Work" means the design and construction of the groundwater  
7 extraction, treatment and recharge system and all other tasks  
8 to be performed by Goodyear pursuant to Paragraph VII of this  
9 Consent Decree, as may be modified pursuant to the provisions  
10 of this Consent Decree, and any schedules or plans required to  
11 be submitted pursuant thereto.

12  
13 5. "Work Assumption Penalty" means the amount to be paid to  
14 EPA by Goodyear pursuant to Paragraph VI if EPA assumes a  
15 portion or all of the Work required by this Consent Decree.

16  
17 V. PURPOSE

18 The purpose of this Consent Decree is to serve the public  
19 interest by protecting the public health, welfare, and the  
20 environment from releases and threatened releases of hazardous  
21 substances at the Site by implementation of Work in the form of  
22 an OU. Goodyear and the United States recognize that the OU  
23 does not constitute the final remedy for the Site, and that the  
24 final remedy will only be determined after completion of a  
25 Remedial Investigation/Feasibility Study ("RI/FS") and  
26 execution by EPA of a Record of Decision which determines that  
27 final remedy.

1  
2       The OU is intended to control the migration and level of  
3 contaminants in the groundwater immediately surrounding the  
4 Site through implementation of the Work by Goodyear. This OU  
5 shall be conducted as described in the 1987 ROD and Paragraph  
6 VII of this Consent Decree.  
7

8                               VI. OBLIGATIONS FOR THE WORK

9       A. Goodyear shall finance and perform, at its expense, the  
10 implementation of the Work. When submitting work plans as part  
11 of such Work, Goodyear may propose to use, or to incorporate,  
12 work it has already conducted. Work already completed shall be  
13 acceptable to the extent it is consistent with the remedy  
14 chosen by EPA and the protocols approved by EPA pursuant  
15 thereto.

16       B. Notwithstanding any approvals which may be granted by  
17 the United States or other governmental entities, the parties  
18 agree that no warranty of any kind is provided by the United  
19 States as to the efficacy of the Work.

20       C. Goodyear shall design, implement, and complete the Work  
21 in accordance with the National Oil and Hazardous Substances  
22 Pollution Contingency Plan ("NCP"), as set forth in 50 Fed.  
23 Reg. 47912 (1985) (effective February 18, 1986), and all  
24 amendments thereto that are effective and applicable to any  
25 activity undertaken pursuant to this Consent Decree, and also  
26 in accordance with the standards, specifications, and schedule  
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2 of completion set forth in or approved by EPA pursuant to  
3 Paragraph VII of this Consent Decree. The Court finds and the  
4 parties agree that the 1987 ROD and the Work, as set forth in  
5 this Consent Decree, are consistent with the NCP.

6 D. Goodyear shall appoint a representative ("Project  
7 Coordinator") to act on its behalf to execute the Work.

8 E. 1. In the event EPA determines that Goodyear has  
9 failed to implement Subparagraphs D.5, 9, or 10 of Paragraph  
10 VII of this Consent Decree in a timely manner, or in a manner  
11 that is consistent with the NCP or the requirements of this  
12 Consent Decree, EPA may assume the performance of any and all  
13 portions of the Work as EPA determines to be necessary. Prior  
14 to such assumption, EPA will provide Goodyear's Project  
15 Coordinator with fifteen (15) days advance notice of intent to  
16 perform a portion of or all of the Work. During the fifteen  
17 day period of time, EPA shall meet with Goodyear's Project  
18 Coordinator and attempt to resolve the issues of concern.

19 2. If, at the end of those fifteen days, EPA determines  
20 that Goodyear has failed to implement Subparagraphs D.5, 9 or  
21 10 of Paragraph VII of this Consent Decree in a timely manner,  
22 or in a manner that is consistent with the NCP or the  
23 requirements of this Consent Decree, Goodyear may invoke the  
24 dispute resolution provisions of this Consent Decree. If the  
25 dispute resolution process determines that EPA should not have  
26 determined to assume the Work pursuant to this Paragraph,  
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2 Goodyear shall pay no stipulated penalties or Work Assumption  
3 Penalty, and may resume the Work in a timely manner, if EPA  
4 approves. By invoking dispute resolution, Goodyear may contest  
5 whether EPA properly determined that the requirements of this  
6 Paragraph for EPA performance were satisfied and what, if any,  
7 stipulated penalties are due; provided, however, that invoking  
8 dispute resolution does not stay EPA's right to perform the  
9 Work; and provided further, that Goodyear may under no  
10 circumstances contest the level of stipulated penalty  
11 applicable to a class of violations. If, on the other hand, at  
12 the end of the fifteen day period, EPA determines that its  
13 concerns will be resolved satisfactorily, EPA shall withdraw  
14 its advance notice of intent to perform a portion or all of the  
15 Work.

16 3. In the event EPA assumes the performance of a portion  
17 or all of the Work, any liability of Goodyear for stipulated  
18 penalties pursuant to Paragraph XXI shall run only until sixty  
19 (60) days after the EPA notifies Goodyear's Project Coordinator  
20 of the intent to perform a portion or all of the Work. If  
21 Goodyear invokes dispute resolution, the obligation to pay  
22 stipulated penalties is stayed until the completion of dispute  
23 resolution proceedings. If the resolution of such proceedings  
24 is that the parties or the Court determine that it was  
25 appropriate under this Paragraph for EPA to have assumed the  
26 performance of some or all of the Work, then the obligation to  
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2 pay stipulated penalties extends to the full sixty (60) days.  
3 If the dispute resolution determines that EPA should not have  
4 assumed any responsibilities for the Work pursuant to this  
5 Paragraph, then no stipulated penalties will be due.

6 4. Goodyear shall pay an additional penalty (Work  
7 Assumption Penalty) of one hundred thousand dollars (\$100,000)  
8 if EPA assumes performance of a portion or all of the Work.  
9 Fifty thousand dollars (\$50,000) of such Work Assumption  
10 Penalty shall be paid thirty (30) days after EPA provides  
11 notice of intent to perform a portion or all of the Work unless  
12 Goodyear invokes dispute resolution as provided for in  
13 Paragraph XXII of this Consent Decree. If Goodyear invokes  
14 dispute resolution, Goodyear shall pay the Work Assumption  
15 Penalty, plus interest at the rate specified in 28 U.S.C.  
16 § 1961, plus two percent running from the date of the receipt  
17 of EPA's notice, at the conclusion of dispute resolution, if  
18 the result of the dispute resolution is that it was appropriate  
19 under this Paragraph for EPA to have assumed performance of  
20 some or all of the Work.

21 Such penalty shall be in addition to reimbursement to EPA  
22 for the costs of the Work performed by EPA in accordance with  
23 Subparagraph E.6.

24 5. If the dispute resolution pursuant to Paragraph XXII  
25 determines that it was appropriate for EPA to have assumed  
26 performance of some or all of the Work, Goodyear may have an  
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1  
2 additional reasonable length of time at EPA's discretion to  
3 cure its default and resume the performance of the Work. In  
4 the event that EPA does permit Goodyear to resume the  
5 performance of the Work, Goodyear shall be excused from 50  
6 percent of all penalties under this Paragraph and Paragraph XXI  
7 if Goodyear is able to implement Subparagraph D.10 of Paragraph  
8 VII in a timely manner. If Goodyear does not resume the Work,  
9 the remaining fifty thousand dollars (\$50,000) shall be paid  
10 thirty (30) days after EPA provides notice to Goodyear that  
11 routine operation of the Work has commenced.

12 6. If EPA performs portions of the Work in accordance with  
13 this Paragraph VI, Goodyear shall reimburse EPA for the costs  
14 of doing such Work within sixty (60) calendar days of receipt  
15 of demand for payment of such costs. Goodyear reserves the  
16 right to contest, through the dispute resolution process set  
17 out in Paragraph XXII, such costs as not actually incurred or  
18 as incurred inconsistent with the NCP. Any demand for payment  
19 made by EPA pursuant to this provision shall include itemized  
20 cost documentation that verifies that the claimed costs were  
21 incurred and that the amount of the demand was properly  
22 calculated.

23 F. All activities undertaken by Goodyear pursuant to this  
24 Consent Decree shall be undertaken in accordance with the  
25 requirements of all applicable state and federal laws,  
26 regulations, and all "applicable" and "relevant and  
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1  
2 appropriate" federal and state environmental requirements as  
3 provided in Section 121(d) of CERCLA, 42 U.S.C. § 9621(d). EPA  
4 has determined that the obligations and procedures authorized  
5 under this Consent Decree are consistent with its authority  
6 under applicable law.

7 G. Pursuant to 42 U.S.C. § 9621(e), no federal, state, or  
8 local permits are necessary for the Work onsite conducted  
9 pursuant to § 106 of CERCLA, within the boundaries as defined  
10 by the NPL, including actions taken pursuant to this Consent  
11 Decree.

12  
13 VII. WORK TO BE PERFORMED  
14

15 A. Goodyear shall perform all work necessary to implement  
16 the OU as defined by EPA's ROD and further defined pursuant to  
17 this Consent Decree. All design and construction obligations  
18 of this Paragraph, through and including the obligations  
19 imposed by Subparagraph D.5., shall be effective upon signature  
20 of this Consent Decree by Goodyear.

21 B. All Work shall be performed by qualified employees or  
22 contractors of Goodyear in accordance with the schedule in  
23 Subparagraph D. below. (Except where noted otherwise, all  
24 dates referred to in the schedule are calendar days; however,  
25 should a deadline fall on a weekend or a Federal holiday, the  
26 deadline shall be construed to continue to the next business  
27 day.)  
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2 C. Requirements for the Work:

3 1. The Work consists of:

4 a) the design and construction of a groundwater  
5 extraction/reinjection system to contain  
6 hydraulically the contaminants of subunit A,  
7 defined in the 1987 ROD, and keep them from  
8 migrating to subunits B/C, defined in the 1987  
9 ROD.

10 b) the design and construction of a groundwater  
11 treatment system to treat extracted water to meet  
12 federal and state standards for treatment plant  
13 discharge levels prescribed in Table I of the ROD.

14 2. Groundwater Extraction/Reinjection System

15 A "zone of capture" will be established  
16 unless the parties agree that it is not  
17 technically feasible. The vertical and lateral  
18 boundaries of the zone of capture will be  
19 determined by groundwater monitoring.

20 The zone of capture will encompass the area of  
21 the Site in which groundwater monitoring  
22 indicates contaminant levels in excess of the  
23 treatment plant discharge levels identified in  
24 Table I of the 1987 ROD. EPA agrees that  
25 Goodyear shall be allowed for the purpose of  
26 defining the zone of capture to demonstrate to  
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1  
2 EPA that values of contaminants above Table I  
3 levels are not statistically significant.

4 3. Reinjection/hydraulic gradient

5 Goodyear shall maintain the zone of capture  
6 by ensuring a hydraulic gradient from the edges  
7 of the zone of capture to the extraction wells.  
8 The parties shall determine during submission and  
9 review of the conceptual design submitted in  
10 accordance with Subparagraph D.3. whether to  
11 extend the zone of capture to include all areas  
12 of the Site at which the levels of contaminants  
13 exceed the treatment plant discharge levels  
14 prescribed in Table I of the ROD.

15 4. Because the OU is not the final remedy for  
16 the Site, the 1987 ROD does not define the level  
17 of cleanup required for the aquifer at the Site.

18 5. Treatment Plant Discharges

19 a) All water from the groundwater extraction  
20 system will be treated and reinjected. Treatment  
21 shall assure that reinjected water will meet  
22 federal and state standards for treatment plant  
23 discharge levels prescribed in Table I of the  
24 1987 ROD. During start-up activities, extracted  
25 water to and from the treatment plant will be  
26 checked on a schedule as provided for in the  
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2 Operations and Maintenance Plan submitted in  
3 accordance with Subparagraphs D.8. and D.10.  
4 b) During routine operations, the treatment  
5 plant discharge must meet federal and state  
6 standards for treatment plant discharge levels  
7 prescribed in Table I of the 1987 ROD on a daily  
8 basis, based on a sampling schedule to be  
9 presented in the Operation and Maintenance Plan.  
10 The Operation and Maintenance Plan developed by  
11 Goodyear pursuant to Subparagraph D.8. shall  
12 include compliance monitoring programs to  
13 demonstrate continued compliance with the  
14 requirements of this Subparagraph C.5. Any  
15 measurable noncompliance with these levels shall  
16 be reported orally to EPA within forty-eight (48)  
17 hours of discovery. A written submission shall  
18 also be provided within five (5) days. This  
19 submission shall include a description of the  
20 noncompliance and its cause; the period of  
21 noncompliance, including the dates and times, and  
22 if the noncompliance has not been corrected, the  
23 anticipated time it is expected to continue; and  
24 steps taken or planned to reduce, eliminate and  
25 prevent reoccurrence of the noncompliance.  
26 Complying with these reporting requirements shall  
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1  
2 not excuse any stipulated penalties resulting  
3 from the noncompliance.

4 c) Air stripping will be used to reduce  
5 volatile organic compound ("VOC") contamination  
6 to meet federal and state standards as prescribed  
7 in Table I of the 1987 ROD. The air stripping  
8 towers will be equipped with air emission  
9 controls in order, among other purposes, to meet  
10 Maricopa County requirements, including Rule 32-C  
11 and any other applicable provisions of the  
12 Arizona Implementation Plan under the Clean Air  
13 Act. If the Maricopa County requirements are  
14 revised and approved by EPA pursuant to the Clean  
15 Air Act to specify that sources such as the air  
16 stripping towers are not subject to air emission  
17 controls, then Goodyear may petition EPA to agree  
18 to amend this Consent Decree to remove the air  
19 emission control requirement of this Paragraph.  
20 Any dispute with regard to any such petition  
21 shall be subject to dispute resolution in  
22 accordance with Paragraph XXII.

23 6. For purposes of this Consent Decree,  
24 Goodyear shall continue operation of the OU until  
25 the earliest of the following events occurs:  
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- 1
- 2 (a) Eight years from the date Goodyear
- 3 begins routine operation activities as
- 4 specified in Subparagraph D.10., after which
- 5 Goodyear shall turn over the facility and
- 6 equipment to EPA or its designee;
- 7 (b) Selection by EPA of a final remedy for
- 8 the Site that does not incorporate the Work
- 9 specified in the Consent Decree; or
- 10 (c) Termination of the Work pursuant to
- 11 Paragraph XXXI of this Consent Decree.

12 7. EPA will make available to Goodyear in a

13 timely manner all data and analyses for the Site.

14

15 D. Schedule For the Work

16 1. Within 14 days after April 1, 1988, Goodyear shall

17 submit a pilot study scope of Work. This shall present the

18 methodology for conducting the pilot studies for

19 reinjection and extraction wells, recharge basins, and

20 treatability studies.

21 2. EPA shall review and approve/disapprove the pilot

22 study scope of Work within 70 days after April 1, 1988.

23 3. Within 168 days after April 1, 1988 or 112 days of

24 EPA's decision to approve/disapprove the pilot study scope

25 of Work, whichever is later, Goodyear shall submit a

26 conceptual design for the OU (30% of complete final

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1  
2 design). The conceptual design shall include, but not be  
3 limited to, the following:

- 4 a. Design analysis, including analysis necessary
- 5 to satisfy state permitting requirements
- 6 b. Location of extraction/reinjection wells (or
- 7 recharge basins)
- 8 c. Major equipment list for treatment plant
- 9 d. Approximate pumping rates for all wells
- 10 e. Site plan (piping/layout)
- 11 f. Easements
- 12 g. Piping and flow diagrams for treatment plant
- 13 h. Results of pilot studies
- 14 i. Ancillary equipment (substations, etc.)
- 15 j. Response to concerns raised in the
- 16 Responsiveness Summary to the 1987 ROD concerning
- 17 design criteria issues.

18 4. EPA shall review and approve/disapprove the  
19 conceptual design within 14 days of submittal.

20 5. Within 238 days after April 1, 1988, or 56 days of  
21 EPA's decision to approve/disapprove the conceptual design,  
22 whichever is later, Goodyear shall submit final draft  
23 design and specifications. These shall include, but not be  
24 limited to:

- 25 a. Design analysis
- 26 b. Piping and instrument diagram for the
- 27 treatment plant

- 1  
2 c. Specifications for the treatment plant or  
3 plants and groundwater system sufficient to  
4 comply with the treatment plant discharge  
5 requirements and zone of capture requirements of  
6 Paragraph VII  
7 d. QA/QC Plan  
8 e. Health & Safety Plan  
9 f. Preliminary Construction Operation and  
10 Maintenance Plan  
11 g. Preliminary Groundwater Treatment Operation  
12 and Maintenance Plan including:  
13 i. Recommended frequency of water level  
14 measurements and water quality testing for  
15 extraction, reinjection and monitoring  
16 wells. These shall include separate  
17 schedules for startup and routine operations.  
18 ii. Proposed decision making process and  
19 criteria for shutting down specific  
20 extraction wells.  
21 iii. Recommended frequency for testing of  
22 air emissions during startup and routine  
23 operations.  
24 h. Construction schedule and phasing.

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2           6.    EPA shall review and approve/disapprove the final  
3 draft design and specifications within 14 days of submittal.

4           7.    Within 308 days after April 1, 1988 or 56 days of  
5 EPA's decision to approve/disapprove the final draft design  
6 and specifications, whichever is later, Goodyear shall  
7 begin construction of facilities for implementation of the  
8 OU; provided, however, that Goodyear shall in no event be  
9 required to commence construction under this schedule until  
10 entry of this Consent Decree. Goodyear shall initiate  
11 preconstruction activities during EPA review of the final  
12 draft design and specifications.

13           8.    Within 378 days after April 1, 1988, or 126 days  
14 of EPA's decision to approve/disapprove the final draft  
15 design and specifications, Goodyear shall submit final  
16 draft Operation and Maintenance Plans to EPA for approval.

17           9.    Within 448 days after April 1, 1988 or 196 days  
18 of EPA's decision to approve/disapprove the final draft  
19 design and specifications, Goodyear shall commence startup  
20 activities.

21           10.   Goodyear shall begin and thereafter maintain  
22 routine operation activities in accordance with an approved  
23 Operation and Maintenance Plan by a date to be established  
24 by EPA after consultation with Goodyear. The date set by  
25 EPA shall permit a reasonable time for Goodyear to complete  
26 start-up testing of all facility components necessary for  
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1  
2 routine operation of the OU. The date shall not be more  
3 than two years after the completion of construction  
4 activities.

5  
6 VIII. REPORTING AND APPROVALS/DISAPPROVALS

7 A. Monthly Progress Reports

8 1. Goodyear shall provide written progress reports to  
9 EPA on a monthly basis. These progress reports shall describe  
10 all actions taken to comply with this Consent Decree, including  
11 a general description of the Work activities commenced or  
12 completed during the reporting period, Work activities  
13 projected to be commenced or completed during the next  
14 reporting period, and any problems that have been encountered  
15 or are anticipated by Goodyear in commencing or completing the  
16 Work activities. These progress reports shall be submitted to  
17 EPA by the 10th of each month for work done the preceding month  
18 and planned for the current month.

19 2. If Goodyear fails to submit any progress report in  
20 accordance with the schedule set forth above, then Goodyear  
21 shall be considered to be in violation of this Consent Decree  
22 and subject to stipulated penalties in accordance with  
23 Paragraph XXI of this Consent Decree.

24  
25 B. Reports, Plans, and Other Items  
26  
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2           1. Any reports, plans, specifications (including  
3 discharge or emission limits), schedules, appendices, and  
4 attachments required or established by this Consent Decree are,  
5 upon approval by EPA, incorporated into this Consent Decree.  
6 Any noncompliance with such EPA approved reports, plans,  
7 specifications (including discharge or emission limits),  
8 schedules, appendices, or attachments shall be considered a  
9 failure to comply with this Consent Decree and subject to  
10 stipulated penalties in accordance with Paragraph XXI of this  
11 Consent Decree. Any such determination of non-compliance with  
12 which Goodyear disagrees shall be deemed a dispute and subject  
13 to the provisions of Paragraph XXII (Dispute Resolution).

14           2. If EPA disapproves any plans or reports (other  
15 than monthly progress reports), or other items required to be  
16 submitted to EPA for approval pursuant to Paragraph VII (Work  
17 to be Performed), Paragraph X (Quality Assurance/Quality  
18 Control), or Paragraph XIV (Site Account), Goodyear shall have  
19 ten (10) working days from the receipt of such disapproval to  
20 correct any deficiencies and resubmit the plan, report, or item  
21 for EPA approval.

22           3. Any disapprovals by EPA shall be in writing and  
23 shall include an explanation by EPA of why the plan, report, or  
24 item is being disapproved.

25           4. In attempting to correct any deficiency as  
26 required by Subparagraph B.2., Goodyear shall address each of  
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1  
2 EPA's comments and resubmit to EPA the previously disapproved  
3 plan, report, or item with the required changes within the ten  
4 (10) day deadline established by that Subparagraph, except that  
5 the period for Goodyear's response may be extended by mutual  
6 agreement of the parties.

7           5. If any plan, report, or item is substantively  
8 deficient after resubmission, then Goodyear shall be deemed to  
9 be in violation of this Consent Decree and subject to  
10 stipulated penalties as governed by Paragraph XXI of this  
11 Consent Decree. Any such determination of non-compliance with  
12 which Goodyear disagrees shall be deemed a dispute and subject  
13 to the provisions of Paragraph XXII ("Dispute Resolution"). In  
14 the event that the deficiency in the plan, report or other item  
15 is corrected by any resubmission permitted under this  
16 Subparagraph B., then Goodyear shall not be deemed to be in  
17 violation of this Consent Decree.

18           C. 1. EPA shall submit monthly reports to Goodyear  
19 showing EPA contractor activities and actual expenditures in  
20 the past thirty (30) days at the PGA Superfund Site and a  
21 projection of contractor activities and expenses expected to be  
22 conducted and incurred by EPA in the succeeding thirty (30)  
23 days. These reports shall be submitted to Goodyear by the 10th  
24 day of each month. EPA shall also discuss the most recent  
25 report with Goodyear during or immediately after each Technical  
26 Committee meeting.



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2           2. In the event EPA should fail to comply with any of  
3 the requirements of Subparagraph 1., it shall not affect any  
4 obligations of Goodyear under this Consent Decree or law.  
5

6                   IX. WORKER HEALTH AND SAFETY PLAN

7           The Worker Health and Safety Plan that Goodyear is required  
8 to submit pursuant to Paragraph VII of this Consent Decree  
9 shall satisfy the requirements of the Occupational Safety and  
10 Health Guidance for Hazardous Waste Site Activities [October  
11 1985 (DHH 5 NIOSH) Publication No. 85-115] and EPA's Standard  
12 Operating Safety Guides.  
13

14                   X. QUALITY ASSURANCE/QUALITY CONTROL

15           A. Goodyear shall submit to EPA for approval, at the same  
16 time as it submits the final draft design documents in  
17 accordance with Paragraph VII.D.5., a Quality Assurance/Quality  
18 Control ("QA/QC") Plan for Remedial Construction activities.  
19 The Remedial Construction QA/QC Plan shall, where applicable,  
20 be prepared in accordance with current EPA guidance, Interim  
21 Guidelines and Specifications for Preparing Quality Assurance  
22 Project Plans, QAMS-005/80, and subsequent amendments to such  
23 guidelines upon written notification by EPA to Goodyear of such  
24 amendments. Additionally, the Remedial Construction QA/QC Plan  
25 shall include elements necessary for the implementation of  
26 trial test(s) of the pumping, treatment and reinjection system  
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2 used as part of the Work. The Remedial Construction QA/QC Plan  
3 shall include a description of the mechanism that shall be used  
4 to verify that the pumping, treatment and reinjection process  
5 is operating within acceptable limits. Upon approval and  
6 notice by EPA to Goodyear, Goodyear shall implement the  
7 Remedial Construction QA/QC Plan.

8 B. Goodyear shall utilize QA/QC procedures in accordance  
9 with the QA/QC plans submitted pursuant to this Consent Decree,  
10 and shall utilize standard EPA chain of custody procedures, as  
11 documented in National Enforcement Investigations Center  
12 Policies and Procedures Manual, as revised in November 1984,  
13 and the National Enforcement Investigations Center Manual for  
14 the Evidence Audit, published in September 1981, for all sample  
15 collection and analysis activities. In order to provide  
16 quality assurance and maintain quality control regarding all  
17 samples collected pursuant to this Consent Decree, Goodyear  
18 shall:

19 1. Ensure that all contracts with laboratories  
20 utilized by Goodyear for analysis of samples taken pursuant  
21 to this Consent Decree provide for access of EPA personnel  
22 and EPA authorized representatives to assure the accuracy  
23 of laboratory results related to the Work.

24 2. Ensure that laboratories utilized by Goodyear for  
25 analysis of samples taken pursuant to this Consent Decree  
26 perform all analyses according to EPA methods or methods  
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2 deemed in advance satisfactory by EPA. Accepted EPA  
3 methods are documented in the "Contract Lab Program  
4 Statement of Work for Inorganic Analysis" and the "Contract  
5 Lab Program Statement of Work for Organic Analysis" dated  
6 July 1985.

7 3. Ensure that all laboratories utilized by Goodyear  
8 for analysis of samples taken pursuant to this Consent  
9 Decree participate in an EPA or EPA equivalent QA/QC  
10 program. As part of the QA/QC program and upon request by  
11 EPA, such laboratories shall perform at their expense  
12 analyses of samples provided by EPA to demonstrate the  
13 quality of each laboratory's data. EPA may provide to each  
14 laboratory a maximum of four samples per year per  
15 analytical combination (e.g., four aqueous samples for  
16 analysis by gas chromatography/mass spectrometry, four  
17 soil/sediment samples for analysis by gas  
18 chromatography/mass spectrometry).

19  
20 XI. PROJECT COORDINATOR

21 A. By April 6, 1988, EPA and Goodyear shall each designate  
22 Project Coordinators to monitor the progress of the Work and to  
23 coordinate communication between EPA and Goodyear. The EPA  
24 Project Coordinator shall have the authority vested in the  
25 Remedial Project Manager and the On-Scene Coordinator by 40  
26 C.F.R. § 300 et seq., 50 Fed. Reg. 47912 (Nov. 20, 1985),  
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2 including such authority as may be added by amendments to 40  
3 C.F.R. § 300, as well as the authority to ensure that the Work  
4 is performed in accordance with all applicable statutes,  
5 regulations, and this Consent Decree. The EPA Project  
6 Coordinator shall also have the authority to require a  
7 cessation of the performance of the Work or any other activity  
8 at the Site that, in the opinion of the EPA Project  
9 Coordinator, may present or contribute to an endangerment to  
10 public health, welfare, or the environment or cause or threaten  
11 to cause the release of hazardous substances from the Site. In  
12 the event the EPA Project Coordinator suspends the Work or any  
13 other activity at the Site, the parties may extend the  
14 compliance schedule of this Consent Decree as appropriate for  
15 the minimum period of time necessary to perform the Work, but  
16 in no event for a period longer than the time of the suspension  
17 of Work or other activities. Should Goodyear desire to extend  
18 the compliance schedule pursuant to this Paragraph, Goodyear  
19 shall propose and EPA shall determine the length of any  
20 extension. A disagreement over the length of such an extension  
21 is a dispute to be resolved through dispute resolution. If the  
22 EPA Project Coordinator suspends the Work or any other activity  
23 for any of the reasons set forth in this Subparagraph A and  
24 those reasons are due to acts or omissions of Goodyear or its  
25 contractor(s) not required by this Consent Decree, then any  
26 extension of the compliance schedule shall be at EPA's  
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2 discretion, subject to dispute resolution procedures, if  
3 invoked by Goodyear. The Project Coordinators do not have the  
4 authority to modify in any way the terms of this Consent  
5 Decree, including Appendix A or any design or construction  
6 plans. The absence of the EPA Project Coordinator from the  
7 Site shall not be cause for stoppage of the Work. EPA and  
8 Goodyear may change their respective Project Coordinators by  
9 notifying the other party in writing at least seven (7)  
10 calendar days prior to the change.

11 B. Goodyear's Project Coordinator may assign other  
12 representatives, including other contractors, to serve as a  
13 Site representative for oversight of performance of daily  
14 operations during remedial activities.

15 C. The EPA Project Coordinator may assign other  
16 representatives, including other EPA employees or contractors,  
17 to serve as a Site representative for oversight of performance  
18 of daily operations during remedial activities. Prior to  
19 invoking formal dispute resolution procedures, any unresolved  
20 disputes arising between the EPA Site representative and  
21 Goodyear or its contractors shall be referred to the EPA  
22 Project Coordinator.

23  
24 XII. ACCESS

25 A. To the extent that access to or easements over property  
26 on the Site but no longer owned or controlled by Goodyear or  
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2 access or easements over property other than the Site is  
3 required for the proper and complete performance of this  
4 Consent Decree, Goodyear shall use its best efforts to obtain  
5 access agreements from the present owners or those persons who  
6 have control within sixty (60) calendar days of the entry of  
7 this Consent Decree. Access agreements shall provide  
8 reasonable access to Goodyear, the United States, the State of  
9 Arizona, and their authorized representatives. In the event  
10 that access agreements are not obtained within the 60 day  
11 period, Goodyear shall notify EPA within five (5) calendar days  
12 thereafter regarding both the lack of, and efforts to obtain,  
13 such agreements. If necessary, EPA agrees to use its best  
14 efforts, consistent with its legal authority, to assist  
15 Goodyear in obtaining such access. The Force Majeure  
16 provisions of Paragraph XXIII shall govern any delays caused by  
17 difficulties in obtaining necessary access to or easements over  
18 property. In the event EPA exercises its access authorities  
19 under Section 104(e) of CERCLA, as amended by SARA, in order to  
20 obtain access for the performance of this Consent Decree,  
21 Goodyear shall reimburse EPA for any amount of costs incurred  
22 in the exercise of such powers.

23 B. 1. After April 1, 1988, Goodyear shall assure that  
24 Goodyear, the United States, the State, and their  
25 representatives, including contractors, shall have  
26 access at all reasonable times to the Site and any  
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2 contiguous property owned or controlled by Loral on  
3 April 1, 1988. In the event Loral transfers some or  
4 all of its property located within the boundaries of  
5 the Site to a third party after April 1, 1988,  
6 Goodyear shall: (a) assure that the instrument  
7 effecting the conveyance or transfer of title contains  
8 a copy of this Consent Decree, the 1987 ROD, and the  
9 listing of the Site on the NPL; and (b) use its best  
10 efforts to assure access to the property from the  
11 third party. EPA and Goodyear acknowledge receipt of  
12 the April 12, 1988 letter from counsel for Loral  
13 Corporation attached as Appendix B. Goodyear also may  
14 request assistance from EPA pursuant to Subparagraph  
15 A, above.

16 2. Any person desiring to obtain access pursuant to  
17 this Subparagraph B shall: (a) notify the Goodyear  
18 Project Coordinator at least twenty-four (24) hours in  
19 advance; and (b) upon receipt of an acceptable time  
20 and date from the Goodyear Project Coordinator, comply  
21 with all applicable provisions of the Worker Health  
22 and Safety Plan submitted as part of the work plans  
23 required by this Consent Decree and approved by EPA;  
24 provided, however, that EPA, exercising best efforts,  
25 may determine under appropriate circumstances that  
26 less notice by EPA is necessary.  
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2 C. Access shall be for purposes of conducting any activity  
3 authorized by this Consent Decree, including, but not limited  
4 to:

- 5 1. Monitoring the progress of activities taking  
6 place;
- 7 2. Verifying any data or information submitted to  
8 EPA;
- 9 3. Conducting investigations relating to  
10 contamination at or near the Site;
- 11 4. Obtaining samples at or near the Site; and
- 12 5. Inspecting and copying records, operating logs,  
13 contracts, or other documents utilized to assess  
14 Goodyear's compliance with this Consent Decree.

15  
16 XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

17 Goodyear shall demonstrate its ability to complete the Work  
18 and to pay all claims that arise from the performance of the  
19 Work by obtaining, and presenting to EPA for approval within  
20 thirty (30) calendar days after April 1, 1988, one of the  
21 following items: 1) performance bond; 2) letter of credit; or  
22 3) guarantee by a third party. In lieu of any of the three  
23 items listed above, Goodyear may present to EPA, within twenty  
24 (20) calendar days after April 1, 1988, financial information  
25 sufficient to satisfy EPA that Goodyear has sufficient assets  
26 to make it unnecessary to require additional assurances. If  
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2 Goodyear relies on financial information for financial  
3 assurance, Goodyear shall quarterly submit such financial  
4 information. If EPA determines the financial assurances to be  
5 inadequate, EPA shall notify Goodyear in writing of the basis  
6 of its determination. EPA shall consider the policies of the  
7 financial assurance requirements of the Resource Conservation  
8 and Recovery Act, 42 U.S.C. § 6901 et seq., in determining the  
9 adequacy of financial assurances. Goodyear may invoke dispute  
10 resolution to resolve a dispute over financial assurances.  
11 However, Goodyear shall obtain one of the three financial  
12 instruments listed above pending resolution of the dispute. If  
13 the dispute resolution process determines that Goodyear's  
14 financial assurances are inadequate, Goodyear shall obtain one  
15 of the three other financial instruments listed above within  
16 thirty (30) calendar days of such determination.  
17

#### 18 XIV. SITE ACCOUNT

19 Goodyear shall maintain a segregated account dedicated to  
20 funding Goodyear's obligations pursuant to this Consent  
21 Decree. Starting April 30, 1988, Goodyear shall quarterly  
22 submit an account statement to EPA demonstrating that the  
23 account is funded adequately to ensure performance of  
24 Goodyear's Consent Decree obligations for the following quarter.  
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2           XV. SUBMISSION OF DOCUMENTS, SAMPLING, AND ANALYSIS

3           A. Goodyear shall submit a quality assurance report to EPA  
4 on a quarterly basis on January 30th, April 30th, July 30th,  
5 and October 30th of each year. This report shall contain  
6 information that demonstrates that Goodyear is complying with  
7 Paragraph XI (QA/QC) of this Consent Decree and the QA/QC Plans  
8 submitted pursuant to this Consent Decree.

9           B. Any analytical or design data generated or obtained by  
10 Goodyear that are related to the Work shall be provided to EPA  
11 within seven (7) days of any request by EPA for such data.

12           C. EPA employees and EPA's authorized representatives  
13 shall have the right, upon request, to take splits of any  
14 samples obtained by Goodyear or anyone acting on Goodyear's  
15 behalf in the implementation of the Work. Goodyear shall also  
16 have the right upon request to obtain splits of samples taken  
17 independently by EPA or its authorized representatives.

18           D. During the design, construction, and start-up  
19 activities, Goodyear shall notify EPA seven (7) days prior to  
20 any sampling conducted by the Goodyear or anyone acting on its  
21 behalf. EPA shall be notified thirty (30) days prior to the  
22 disposal of any such sample, and EPA shall have an opportunity,  
23 upon request, to take possession of all or a portion of such  
24 sample.

25           Goodyear need not provide EPA with 7-day notice of routine  
26 sampling relating to the routine operation of the treatment  
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2 system. Prior to commencement of the routine operation of the  
3 treatment system, however, Goodyear shall provide EPA with a  
4 schedule for all routine sampling relating to the operation of  
5 the treatment system. Goodyear shall notify EPA seven (7) days  
6 in advance of any changes in the routine sampling schedule.  
7 Goodyear need not provide EPA with advance notice of changes in  
8 the routine treatment system sampling as a result of unexpected  
9 conditions. Goodyear shall, however, notify EPA within  
10 forty-eight (48) hours of such occurrence and shall provide EPA  
11 with the results of analysis of such sampling when the results  
12 become available.

13 E. All data, factual information, and documents submitted  
14 by Goodyear to EPA and the State pursuant to this Consent  
15 Decree shall be subject to public inspection. Goodyear shall  
16 not assert a claim of confidentiality regarding any  
17 hydrogeological or chemical data, any data submitted in support  
18 of a remedial proposal, or any other scientific or engineering  
19 data. Goodyear may assert a claim of confidentiality as to any  
20 process, method, technique, or any description thereof that  
21 Goodyear claims constitute proprietary or trade secret  
22 information developed by Goodyear or developed by the  
23 contractor or the contractor's subcontractors. In addition,  
24 Goodyear may assert business confidentiality claims covering  
25 part or all of the information provided in connection with this  
26 Consent Decree in accordance with Section 104(e)(7) of CERCLA,  
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2 42 U.S.C. § 9604(e)(7) and pursuant to 40 C.F.R. § 2.203(b) or  
3 applicable state law. Any such claim shall be subject to EPA's  
4 confidentiality determination procedures and, if determined to  
5 be confidential, afforded the protection by EPA provided in 40  
6 C.F.R., Part 2, Subpart B.

7 Documents which are asserted to be attorney work product or  
8 subject to privilege under law are not subject to inspection or  
9 copying under this Consent Decree provided that, upon request,  
10 Goodyear shall provide EPA with an identification of the title  
11 and subject matter of each document for which a privilege is  
12 asserted, and an explanation as to why the privilege is  
13 applicable to the document or portions thereof.

14  
15 XVI. RETENTION OF RECORDS

16 Goodyear shall preserve and retain all records and  
17 documents now in its possession or control that relate in any  
18 manner to the Site, regardless of any document retention policy  
19 to the contrary, for no less than six years after the  
20 completion of the construction of the Work or termination of  
21 this Consent Decree, whichever is later.

22 Until completion of the Work and termination of this  
23 Consent Decree, Goodyear shall preserve, and shall instruct the  
24 contractor, the contractor's subcontractors, and anyone else  
25 acting on Goodyear's behalf at the Site to preserve (in the  
26 form of originals or exact copies, or in the alternative,  
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1 microfiche of all originals) all records, documents and  
2 information of whatever kind, nature, or description relating to  
3 the performance of the Work at the Site. Upon the completion of  
4 the Work, copies of all such records, documents, and information  
5 shall be delivered to the EPA Project Coordinator.  
6

7 XVII. CLAIMS AGAINST THE FUND

8 Goodyear agrees not to make a claim against the Hazardous  
9 Substances Superfund, 42 U.S.C. §§ 9611 and 9612, for  
10 reimbursement of any funds expended by Goodyear in complying  
11 with any of the requirements of this Consent Decree.  
12

13 XVIII. RESPONSE AUTHORITY

14 Nothing in this Consent Decree shall be deemed to limit  
15 the response authority of EPA under Section 104 of CERCLA,  
16 42 U.S.C. § 9604, or under Section 106 of CERCLA, 42 U.S.C.  
17 § 9606, or under any other federal response authority. This  
18 Paragraph may not be used to amend the Work except as  
19 authorized by CERCLA.  
20

21 XIX. REIMBURSEMENT OF COSTS

22 A. Goodyear shall pay \$2,616,589.00 to EPA in full  
23 satisfaction of all claims for recovery of response costs  
24 incurred on or before December 24, 1987 by EPA and the United  
25 States Department of Justice. If Goodyear pays the full amount  
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2 within thirty (30) days of entry of this Consent Decree, no  
3 interest shall be owed. Goodyear shall also have the following  
4 two alternative options:

5 1. Goodyear may pay the full amount within ninety  
6 (90) days of entry of this Consent Decree, in which  
7 case Goodyear shall also pay interest accruing from  
8 the thirty-first day after entry, in an amount  
9 equivalent to the amount that would be prescribed for  
10 prejudgment interest on the same principal amount by  
11 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

12 2. Goodyear may pay one-third of the total amount  
13 owed no later than ninety (90) days after entry of  
14 this Consent Decree; one-third of the total amount no  
15 later than four hundred fifty-five (455) days after  
16 entry; and one-third within eight-hundred twenty (820)  
17 days after entry. Each of these three payments shall  
18 include interest on all outstanding amounts accruing  
19 from the thirty-first day after entry of this Consent  
20 Decree at the rate specified in Subparagraph 1.

21 B. If Goodyear makes the payments required by Subparagraph  
22 A., EPA covenants not to bring any civil judicial or civil  
23 administrative action to recover any response costs incurred by  
24 EPA or the Department of Justice at the PGA Superfund Site, as  
25 designated on the NPL ("PGA Superfund Site") on or before  
26 December 24, 1987. EPA and the United States reserve the right  
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3 to seek judicial or administrative relief for recovery of all  
4 other response costs.

5 C. For each payment required by this Paragraph, Goodyear  
6 shall deliver a check payable to the Hazardous Substances  
7 Superfund in the specified amount to the following address:

8 U.S. Environmental Protection Agency  
9 Superfund Accounting  
10 P.O. Box 371003M  
Pittsburgh, PA 15251  
ATTENTION: Collection Officer for Superfund

11 A copy of the check and letter enclosing the check shall be  
12 submitted to EPA in accordance with Paragraph XXIV.

13 D. No payment by Goodyear in accordance with this  
14 Paragraph is a penalty, fine, or monetary sanction of any kind.

15  
16 XX. RESERVATION OF RIGHTS

17 A. Notwithstanding compliance with the terms of this  
18 Consent Decree, including the successful completion of the Work  
19 to EPA's satisfaction, Goodyear is not released from liability,  
20 if any, for any actions taken by EPA respecting the Site other  
21 than as provided in Paragraph XIX.

22 B. 1. Except as provided in Paragraph XIX, EPA reserves  
23 the right to take any enforcement action pursuant to CERCLA  
24 and/or any other legal authority, including the right to  
25 seek injunctive relief, monetary penalties, and/or punitive  
26 damages for any civil or criminal violation of law and/or  
27 this Consent Decree.  
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2           2. EPA expressly reserves all rights and defenses  
3 that it may have, including its right to disapprove work  
4 performed by Goodyear and to seek to compel Goodyear  
5 pursuant to Section 106 of CERCLA and/or Section 7003 of  
6 RCRA to perform tasks in addition to the Work as provided  
7 in this Consent Decree. EPA reserves the right to  
8 undertake removal actions and/or remedial actions at any  
9 time pursuant to Section 104 of CERCLA. EPA reserves the  
10 right to seek reimbursement from Goodyear for costs  
11 incurred by EPA pursuant to Section 107 of CERCLA and/or  
12 Section 7003 of RCRA in taking such actions.

13           C. The parties recognize that Goodyear is entering into  
14 this Consent Decree as a compromise of disputed claims and that  
15 Goodyear does not admit, accept, or intend to acknowledge any  
16 liability or fault with respect to any matter arising out of or  
17 relating to the Site. Goodyear retains the right to controvert  
18 the validity of any factual or legal claims or determinations  
19 made herein by EPA, except that Goodyear does not contest the  
20 entry of this Consent Decree and agrees to be bound by its  
21 terms.

22           D. Except as expressly provided in Paragraph XVII or  
23 elsewhere in this Consent Decree, Goodyear expressly reserves  
24 all rights and defenses that it may have, including the right  
25 to make a claim or counterclaim against the United States,  
26 alleging that because of acts or omissions of the United States  
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2 Navy, the United States should be liable to Goodyear for  
3 contribution for the costs of the Work incurred by Goodyear at  
4 the PGA Superfund Site, unless a satisfactory settlement as to  
5 allocation of financial responsibility is reached between  
6 Goodyear and the Department of Defense by June 1, 1988.  
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XXI. STIPULATED PENALTIES

A. Consistent with Subparagraph VIII.B., and also except  
where excused by Paragraph XXIII (Force Majeure), the following  
stipulated penalties shall apply:

1. Goodyear shall pay stipulated penalties of \$500  
per day for submission of a deficient or delinquent  
monthly status report as called for in Subparagraph  
VIII.A.; for the submission of a deficient or  
delinquent Site Account report as called for in  
Paragraph XIV; for the submission of a deficient or  
delinquent quarterly quality assurance report as  
called for in Subparagraph XV.A.; or for failure to  
submit analytical or design data as called for in  
Subparagraph XV.B. Goodyear shall not be liable for  
more than 31 days of violation for submission of any  
one deficient or delinquent monthly status report.

2. Goodyear shall pay the following stipulated  
penalties for failure to comply with the requirements  
of Subparagraph VII.D.3. (Conceptual Design  
Submission):

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<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 20th calendar day	\$2,500
21st through 45th calendar day	\$6,000
46th calendar day and beyond	\$10,000

3. Goodyear shall pay the following stipulated penalties for failure to comply with the requirements of Subparagraph VII.D.5. (Final Draft Design and Specifications Submission) or Subparagraph VII.D.8. (Final Draft Operation and Maintenance Plan Submission):

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 20th calendar day	\$3,500
21st through 45th calendar day	\$7,000
46th calendar day and beyond	\$10,500

4. Goodyear shall pay the following stipulated penalties for failure to comply with the requirements of Subparagraph VII.D.9. (Commencement of Startup):

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 20th calendar day	\$4,000
21st through 45th calendar day	\$8,000
46th calendar day and beyond	\$12,000

5. During the period of time from six months after Goodyear's commencement of startup activities of the Work to commencement of routine operations as specified in Subparagraph VII.D.10., Goodyear shall pay stipulated penalties for all discharges of VOCs in excess of the treatment plant discharge levels established in Table 1. of the 1987 ROD. Goodyear reserves the right to resample within 24 hours to demonstrate to the satisfaction of EPA that a sample result does not accurately reflect the concentration of VOCs actually discharged. In the event that Goodyear is able to make such a demonstration, stipulated penalties shall not be assessed. Temporary exceedances due to changes in operations which are consistent with an Operation and Maintenance Plan approved in accordance with Subparagraph VII.D.8. shall not be considered violations of this Consent Decree or be subject to statutory or stipulated penalties. Goodyear shall be deemed to be in

violation from the first day of sample exceedance and for each day thereafter until sample results demonstrate compliance with the 1987 ROD Table 1 treatment plant discharge levels and shall pay penalties based on the following schedule:

Penalty Per Day of Violation

Up to one order of magnitude over Table 1 levels	Up to two orders of magnitude over Table 1 levels	Over two orders of magnitude over Table 1 levels
\$500	\$1,500	\$2,500

6. After routine operations are commenced pursuant to Subparagraph VII.D.10., Goodyear shall pay stipulated penalties for all discharges of VOCs and chromium in excess of treatment plant discharge levels established in Table 1 of the 1987 ROD. Goodyear reserves the right to resample within 24 hours to demonstrate to the satisfaction of EPA that a sample result does not accurately reflect the concentration of VOCs or chromium actually discharged by Goodyear. In the event that Goodyear is able to make such a demonstration, stipulated penalties shall not be assessed. Goodyear shall be deemed to be in violation from the first day of sample exceedance and for each

day thereafter until sample results demonstrate compliance. Temporary exceedances due to changes in operation consistent with an Operation and Maintenance Plan approved in accordance with Subparagraph VII.D.8. shall not be subject to statutory or stipulated penalties. All other exceedances shall be subject to stipulated penalties pursuant to the following schedule:

Days of Violation	Up to One Order of Magnitude Over Table 1 Levels	Up to Two Orders of Magnitude Over Table 1 Levels	Over Two Orders of Magnitude Over Table 1
1st through 30th calendar day	\$1,000	\$2,000	\$3,000
31st through 60th calendar day	\$2,000	\$4,000	\$6,000
61st through 90th calendar day	\$3,000	\$6,000	\$9,000
91st calendar day and beyond	\$5,000	\$10,000	\$15,000

After 30 violations of any order of magnitude, the next violation (of any order) shall be assessed in the second (31-60) tier. After 60 violations of any order of magnitude, the next violation (of any order) shall be assessed in the third (61-90) tier. After 90

violations of any order of magnitude, the next violation (of any order) shall be assessed in the fourth (91 and beyond) tier.

7. Goodyear shall pay the following stipulated penalties for failure to begin routine operation activities pursuant to Subparagraph VII.D.10.:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 20th calendar day	\$5,000
21st through 45th calendar day	\$15,000
46th calendar day and beyond	\$25,000

8. After routine operations are commenced pursuant to Subparagraph VII.D.10, Goodyear shall pay the following stipulated penalties for failure to comply with the requirements of Subparagraphs VII.C.3. and VII.D.10.:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 20th calendar day	\$5,000
21st through 45th calendar day	\$10,000
46th calendar day and beyond	\$15,000

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2       Goodyear shall be deemed to be in violation from the first  
3 day after the deadline for performance of a requirement of this  
4 Consent Decree until the requirement is satisfied, unless  
5 performance is excused pursuant to this Consent Decree.

6       B. Stipulated penalties under this Paragraph shall be paid  
7 by check payable to the Hazardous Substances Superfund and  
8 shall be paid by the 15th day of the month following the month  
9 in which the violation occurred. Failure to timely pay a  
10 stipulated penalty is an additional violation of the Consent  
11 Decree subject to stipulated penalties based on the schedule  
12 for the compliance obligation violated. A copy of the check  
13 and the letter forwarding the check, including a brief  
14 description of the non-compliance, shall be submitted to EPA in  
15 accordance with Paragraph XXIV.

16       C. The stipulated penalties established in this Consent  
17 Decree shall be the exclusive mechanism for the assessment and  
18 collection of penalties for noncompliance with the provisions  
19 subject to stipulated penalties.

20       D. In the event that stipulated penalties in accordance  
21 with Subparagraphs XXII. A.1.-4. become due and payable during  
22 the pendency of this Consent Decree, EPA shall delay  
23 requirement of payment of fifty percent of the stipulated  
24 penalties until the later of: (1) the deadline for  
25 commencement of routine operations pursuant to Subparagraph  
26 VII.D.10.; and (2) if Goodyear timely invokes dispute  
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2 resolution, the completion of a dispute resolution or judicial  
3 review as specified in Paragraph XXII. EPA shall, at that  
4 time, forgive payment of the remaining 50 percent of such  
5 penalties if Goodyear has met the deadline for commencement of  
6 routine operations in accordance with Subparagraph VII.D.10.,  
7 as adjusted by any extensions of the schedule in accordance  
8 with this Consent Decree.  
9

10 XXII. DISPUTE RESOLUTION

11 A. In the event that the parties cannot resolve any dispute  
12 arising under this Consent Decree, then the interpretation  
13 advanced by EPA shall be considered binding unless Goodyear  
14 invokes the dispute resolution provisions of this Paragraph.  
15 Goodyear's decision to invoke dispute resolution shall not  
16 constitute a force majeure under Paragraph XXIV herein.

17 B. Any dispute as to which this Consent Decree provides  
18 for dispute resolution shall in the first instance be the  
19 subject of informal negotiations between EPA and Goodyear.  
20 Such period of informal negotiations shall not extend beyond  
21 forty-five (45) days, unless the parties agree otherwise,  
22 during which time the parties may also agree to utilize  
23 appropriate Alternative Dispute Resolution ("ADR") mechanisms.

24 C. At the termination of unsuccessful informal  
25 negotiations, should Goodyear choose not to accept EPA's  
26 position, Goodyear may file with the Court a petition which  
27  
28



1 shall describe the nature of the dispute and include a proposal  
2 for its resolution. Goodyear may not file such a petition  
3 until informal negotiations are completed; provided, however,  
4 that any party may present the matter to the Court for  
5 resolution earlier than forty-five (45) days from the time the  
6 dispute arises if the matter involves stipulated or statutory  
7 penalties or if EPA seeks to have Goodyear perform work which  
8 is in addition to the terms of this Consent Decree. The filing  
9 of a petition asking the Court to resolve a dispute shall not  
10 of itself postpone the deadlines for Goodyear to meet its  
11 obligations under this Consent Decree with respect to the  
12 disputed issue, or stay the provisions of Paragraph XXII  
13 (Stipulated Penalties), except that Goodyear shall not be  
14 obligated to pay penalties accrued until completion of the  
15 dispute resolution process.  
16

17 D. The United States shall have sixty (60) days to respond  
18 to the petition. In the event of a dispute over an EPA  
19 decision regarding the extent, adequacy, or duration of the  
20 Work, including any relief pursuant to Paragraph XXXI of this  
21 Consent Decree, Goodyear shall have the burden of demonstrating  
22 that the EPA decision is inconsistent with the NCP. EPA's  
23 decision will be upheld by the Court unless shown by Goodyear  
24 to be arbitrary and capricious or otherwise not in accordance  
25 with law. Judicial review regarding any issue concerning the  
26 adequacy of a response action shall be limited to the  
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1  
2 administrative record pursuant to Section 113(j) of CERCLA, 42  
3 U.S.C. § 9613(j). The adequacy of the response action  
4 includes: (1) The adequacy of plans, and procedures to  
5 implement those plans, submitted for approval in accordance  
6 with this Consent Decree; and (2) the adequacy of the Work  
7 required by this Consent Decree. If the Court finds that  
8 Goodyear has satisfied its burden and therefore is the  
9 prevailing party in the dispute, Goodyear shall pay no  
10 stipulated penalties for failing to timely perform the disputed  
11 actions. In the event of a dispute, Goodyear shall continue  
12 its undisputed activities required by this Consent Decree to  
13 the fullest extent possible pending resolution of the dispute.

14 E. If the Court does not find that Goodyear has satisfied  
15 its burden, Goodyear shall transmit payment of all penalties  
16 which have accrued during the dispute, plus interest at the  
17 rate specified in 28 U.S.C. § 1961, plus two percent, to the  
18 Hazardous Substances Superfund within fifteen (15) working days  
19 of resolution of the dispute.

20 F. Except as provided in Subparagraph D., in the event of  
21 a dispute over whether a stipulated penalty is owed, the United  
22 States shall bear the burden of showing noncompliance with the  
23 provision of the Consent Decree in question.  
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XXIII. FORCE MAJEURE

Goodyear shall perform all the requirements of this Consent Decree according to the time limits set out in the Consent Decree and referenced supporting documents or any modification thereto unless its performance is prevented or delayed by events which constitute a force majeure.

"Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of Goodyear which delay or prevent the performance of any obligation under this Consent Decree. "Force Majeure" shall not include: (1) increased costs or expenses; or (2) delays due to acts or omissions of Loral Corporation while it owns any property within or contiguous to the Site. Goodyear reserves the right to demonstrate that under appropriate circumstances, events beyond the control of Goodyear include but are not limited to: adverse weather conditions; injunctions and other orders issued by courts or administrative agencies; delay associated with achieving the requirements of Paragraph VII. because to do so has become technically impracticable from an engineering perspective or because it would result in greater risk to human health and the environment than alternative options; unanticipated breakage or accident to machinery, equipment, or lines of pipe despite diligent maintenance; delay in obtaining access to property upon which the Work is to be done provided the property is no longer owned by Loral

1  
2 Corporation; delay in obtaining permits or approvals required  
3 for the Work; and selection by the State of Arizona of a  
4 response action inconsistent with the terms of this Consent  
5 Decree. EPA reserves the right to contend that any of the  
6 above circumstances do not constitute events beyond the control  
7 of Goodyear.

8 Goodyear shall have the burden of proving by clear and  
9 convincing evidence that any delay is or will be caused by  
10 events beyond its control and that the duration of the delay  
11 requested is necessary.

12 In the event of a force majeure, the time for performance  
13 of the activity delayed by the force majeure shall be extended  
14 for the minimum time necessary to allow completion of the  
15 delayed activity but in no event for a period longer than the  
16 period of the delay attributable to the force majeure. The  
17 time for performance of any activity dependent on the delayed  
18 activity shall be similarly extended. EPA shall determine  
19 whether and to what extent the time for performance shall be  
20 extended. Goodyear shall adopt all practicable measures to  
21 avoid or minimize any delay caused by a force majeure.

22 In the event Goodyear discovers a force majeure, Goodyear  
23 shall orally notify EPA's Project Coordinator no later than  
24 forty-eight (48) hours after Goodyear becomes aware of the  
25 occurrence of the force majeure and shall notify EPA, in  
26 writing, no later than seven (7) calendar days after discovery  
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1 of the force majeure, of the anticipated length and cause of  
2 the delay. If EPA agrees that a delay is or was attributable  
3 to the "force majeure" event, EPA and Goodyear shall modify the  
4 requirements of the Work to provide such additional time as may  
5 be necessary to allow the completion of the specific phase of  
6 Work and/or any succeeding phase of the Work affected by such  
7 delay, with such additional time not to exceed the actual  
8 duration of the delay. In the event that EPA and Goodyear  
9 cannot agree that any delay in the Work has been or will be  
10 caused by circumstances beyond the control of Goodyear, or as  
11 to the appropriate length of the delay, the dispute shall be  
12 resolved in accordance with Paragraph XXII (Dispute Resolution).  
13  
14

15 XXIV. FORM OF NOTICE

16 When notification to or communication with EPA, Goodyear or  
17 the State is required by the terms of this Consent Decree, it  
18 shall be in writing, postage prepaid, and addressed as follows:  
19

20 As to EPA:

21 EPA Project Coordinator - PGA Site  
22 Superfund Enforcement Branch  
23 U.S. Environmental Protection Agency  
215 Fremont Street  
San Francisco, CA 94105

24 As to Goodyear:

25 Manager  
26 Corporate Environmental Engineering  
27 Dept 110-C  
Goodyear Tire & Rubber Company  
1144 East Market Street  
Akron, OH 44316  
28

1  
2                   As to the State:

3                   Theo Camlin  
4                   Arizona Department of Environmental Quality  
5                   2501 N. Central Avenue  
6                   Suite 400  
7                   Phoenix, Arizona 85007

8                   Any submission to EPA for approval pursuant to this Consent  
9                   Decree shall be made to the address shown above and shall be  
10                  made by overnight mail or some equivalent delivery service.

11                                   XXV. MODIFICATION

12                  The parties recognize that information or data gathered  
13                  during the performance of the Work required by this Consent  
14                  Decree may indicate that modifications to the Work are  
15                  necessary to accomplish the objectives of Paragraph V and/or  
16                  VII of the Consent Decree. In that event, Goodyear may  
17                  recommend in writing modifications to the Work or the schedule  
18                  for the Work's performance. Such modifications shall not be  
19                  made prior to their written approval by EPA. If EPA denies a  
20                  request for modification by Goodyear, Goodyear may invoke the  
21                  dispute resolution process of Subparagraph XXII.B.; provided,  
22                  however, that judicial review shall not be available for any  
23                  such dispute. Any modifications ultimately made shall be  
24                  memorialized in writing by EPA, made available to Goodyear, and  
25                  constitute a modification of the Work.

26                  Except as provided in this Paragraph or in this Consent  
27                  Decree, there shall be no modification of this Consent Decree  
28                  without written approval of all parties to this Consent Decree.

1  
2 XXVI. ADMISSIBILITY OF DATA

3 In the event that the Court is called upon to resolve a  
4 dispute concerning implementation of this Consent Decree, the  
5 parties waive any evidentiary objection to the admissibility  
6 into evidence of data gathered, generated or evaluated pursuant  
7 to this Consent Decree.  
8

9 XXVII. EFFECTIVE DATE

10 - Except as provided in Paragraph VII, this Consent Decree is.  
11 effective upon the date of its entry by the Court.  
12

13 XXVIII. INDEMNIFICATION

14 A. Goodyear shall indemnify the United States and hold the  
15 United States harmless for any claims arising from any injuries  
16 or damages to persons or property resulting from any acts or  
17 omissions of Goodyear, its officers, employees, agents,  
18 receivers, trustees, successors, assigns, contractors,  
19 subcontractors, or any other person acting on its behalf in  
20 carrying out this Consent Decree. In the event of any suit  
21 alleging such injuries or damages, the United States will  
22 defend in good faith against such suit to the extent consistent  
23 with law and the public interest.

24 B. The United States shall provide notice to Goodyear of  
25 any such suit within sixty (60) days of its service upon the  
26 United States. The United States shall provide Goodyear with  
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1  
2 an opportunity to confer with the United States before settling  
3 any such suit. Rights of participation by Goodyear in any such  
4 suit shall be governed by the Federal Rules of Civil Procedure.

5 C. In the event the United States fails to provide notice  
6 or an opportunity to confer as provided by Subparagraph B.,  
7 indemnification required by this Paragraph shall be reduced by  
8 any amount Goodyear demonstrates to have been caused by such  
9 failure.

10 - D. Pursuant to the authorities in Section 119 of SARA,  
11 Goodyear shall have the right to seek indemnification from the  
12 United States for response action contractors retained to  
13 perform the Work.  
14

15 XXIX. OTHER CLAIMS

16 With respect to any person, firm, partnership, or  
17 corporation not a signatory to this Consent Decree, nothing in  
18 this Consent Decree shall constitute or be construed as a  
19 covenant not to sue by any signatory with respect to, or as  
20 release from any claims, cause of action, or demand in law or  
21 equity.  
22

23 XXX. CONTINUING JURISDICTION

24 The Court specifically retains jurisdiction over both the  
25 subject matter of and the parties of this action for the  
26 duration of this Consent Decree for the purposes of issuing  
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1  
2 such further orders or directions as may be necessary or  
3 appropriate to construe, implement, modify, enforce, terminate,  
4 or reinstate the terms of this Consent Decree or for any  
5 further relief as the interest of justice may require.  
6

7  
8 XXXI. TERMINATION AND SATISFACTION

9 A. EPA agrees that, when it selects the final remedy for  
10 the PGA Superfund Site, it will address the relevancy of the  
11 Work being performed pursuant to this Consent Decree to that  
12 final remedy. In the event that the final remedy selected by  
13 EPA for the PGA Superfund Site does not incorporate a  
14 continuation of all or part of the Work required by this  
15 Consent Decree, the obligations of this Consent Decree shall be  
16 deemed satisfied with respect to those portions of the Work not  
17 incorporated, and Goodyear shall terminate those portions of  
18 the Work.

19 B. Except as provided in Subparagraph C., if the final  
20 remedial action selected for the PGA Superfund Site by EPA does  
21 incorporate the requirements of this Work, or if there is no  
22 final remedial action selected for the PGA Superfund Site, then  
23 the provisions of this Consent Decree shall be deemed satisfied  
24 at the end of eight years after Goodyear commences routine  
25 operations as specified in Paragraph VII D.10 of this Consent  
26 Decree. At the end of this eight year period, Goodyear shall  
27 relinquish control of the equipment and facilities required to  
28 perform the Work to EPA or its authorized designee, unless

1  
2 Goodyear and EPA renegotiate the provisions of this Consent  
3 Decree.

4 C. Goodyear also may petition EPA for relief from the  
5 requirements of the Work and for termination of the  
6 requirements of this Consent Decree if Goodyear has reason to  
7 believe that one of the following conditions exist:

8 1. The requirements of the Work, including any  
9 modifications thereto pursuant to Paragraph XXV of this  
10 - Consent Decree, are inconsistent with response actions  
11 selected for the PGA Superfund Site by EPA.

12 2. The Work as defined in Paragraphs V and VII of  
13 this Consent Decree is technically impracticable to achieve  
14 from an engineering perspective.

15 3. The Work as defined in Paragraphs V and VII of  
16 this Consent Decree will result in greater risk to human  
17 health and the environment than alternative options.

18 4. The objectives of the Work as set forth in  
19 Paragraph V of this Consent Decree have been achieved prior  
20 to the time established for termination in Subparagraph  
21 VII.C.6., and no further Work is required to maintain  
22 achievement of those objectives.

23 EPA shall respond to any petition from Goodyear within 30 days  
24 of its receipt. In the event of a disagreement, the dispute  
25 resolution process of Paragraph XXII shall apply. Pending a  
26 decision, Goodyear shall continue to perform the Work.

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XXXII. SECTION HEADINGS

The section headings set forth in this Consent Decree and its Table of Contents are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Consent Decree.

SIGNED AND ENTERED THIS \_\_\_\_ day of \_\_\_\_\_, 1988.


\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

1  
2  
3 CONSENTED TO:

UNITED STATES OF AMERICA  
Plaintiff

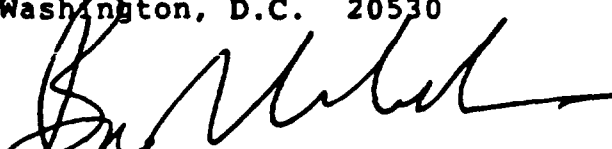
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6 Dated: AUG 23 1988

By:

  
ROGER J. MARZULLA  
Acting Assistant Attorney General  
Land and Natural Resources Division  
United States Department of Justice  
Washington, D.C. 20530


7  
8  
9  
10 Dated: 5/24/88

By:

  
BARRY S. SANDALS  
Senior Counsel  
Environmental Enforcement Section  
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United States Department of Justice  
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11  
12  
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14  
15 Dated: 9-6-88

By:

  
JAMES P. LOSS  
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17  
18  
19  
20 Dated: 7-11-88

By:

  
THOMAS L. ADAMS  
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2 Dated: 5/24/88

By:

Daniel W. McGoVERN  
DANIEL W. MCGOVERN  
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8 GOODYEAR TIRE & RUBBER COMPANY  
9 Defendant

10 Dated: 5.21.88

By:

Robert M. Hehir  
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14 Dated: 5/21/88

By:

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1 Dated: 5/2/88

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2  
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6 Dated: 5/2/88

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